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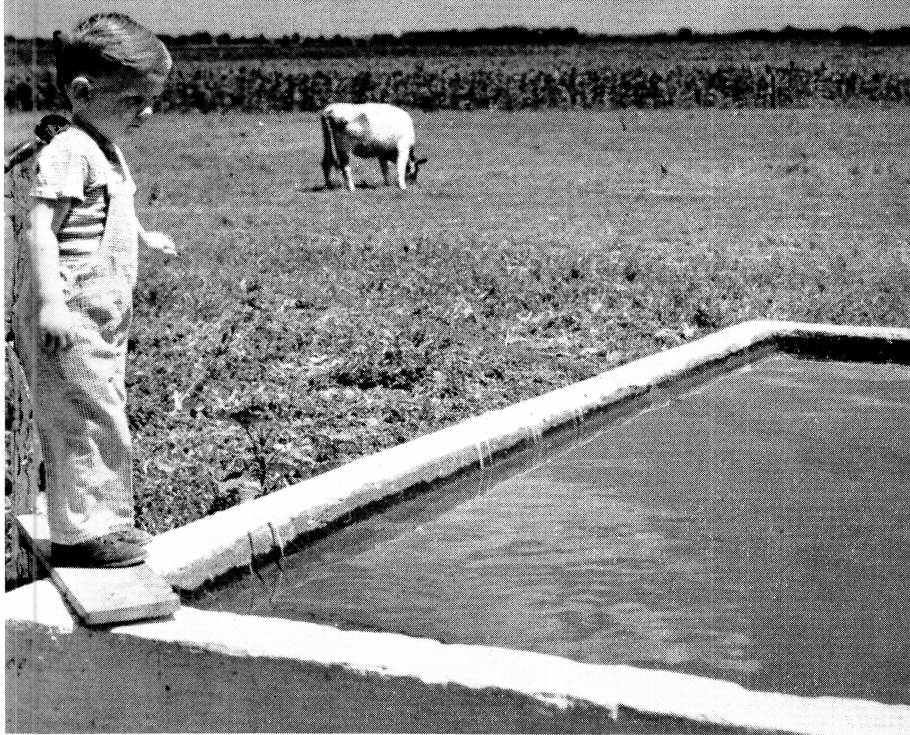
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## Farm Accidents—Who's Liable?

**Accidents can happen on any farm. If someone is hurt on your farm, who, if anyone, is liable? The law specifies certain responsibilities you owe to every person on or near your land.**

by Charles K. Peart and Walter Chryst

**A**CCIDENTS can happen on any farm. If there's an accident on your farm and someone is injured, who's liable? Or is there any legal liability at all?

The steps of your barn give way; a cattle buyer is injured. Can he recover damages? If he can, who's liable—landlord or tenant?

A group of children are playing in the pasture, one of them falls into an abandoned well. Is anyone liable? Who?

First we need to know *when* there can be recovery of damages for an accident. According to the law, when a person comes on a farm he's in one of three classes: a *business visitor*, a *licensee* or a *trespasser*. If he's injured on the

farm, whether or not he can go to court and recover damages depends to a great extent into which of these three classes he fits. The law specifies a certain duty owed to each one of these classes.

### Business Visitors

Anyone coming on your farm to transact any form of business is a business visitor. This would include the cattle buyer as well as a city resident coming out to buy eggs. You owe a very strong "duty of care" to your business visitors.

"Duty of care" means the responsibility owed to a person to protect him from harm. If you don't use reasonable precautions to protect a business visitor from harm, you can generally be held liable if there's an accident resulting in injury.

If the business visitor is aware of the danger, however, or if the dangerous condition is so obvious

as to be easily avoided, there can be no recovery of damages.

### Licensees

A licensee is a person privileged to come on your land because of some kind of consent. This doesn't mean he has to get your permission—but merely that you don't object to anyone using the land.

For example, a licensee might use a path crossing your field or a commonly used lane connecting with another farm. If a creek on your land is fished by the public and you don't object, the fishermen are licensees. Another example is the social guest—friends invited for supper, for instance.

The law says you owe only a limited duty of care to a licensee. But if he's injured due to your reckless conduct or negligence or due to concealed dangers or defects that you know of, there is liability.

### Trespassers

In general the possessor of land is not liable for an injury to someone trespassing upon his land. But the law does sympathize with a trespasser in certain instances.

If you discover a trespasser, you're required to use care for his safety—don't shoot! You're also liable for damages if the trespasser is injured by a concealed dangerous condition that you know about.

### Trespassing Children

A trespassing child can recover damages for an injury received from what the law calls an "attractive nuisance." This is something on the farm that attracts children and is dangerous to children. A piece of machinery left where children go by or play might be an attractive nuisance under the law. However, there are several conditions that have to be met before a farmer will be held liable for an injury to a trespassing child.

First, the place on the farm where the condition—the "nuisance"—is maintained must be one where you know or should know that children will come. An example would be a farm located on a route children take to and from school. If you know or could

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expect that school children will pass over or come near part of your farm, it's your duty to protect them, even though they're trespassing.

Second, the condition must be one which you should know would involve a risk of danger to children. But ordinarily you're not liable for injuries caused by natural conditions of the land, such as a high bank or a creek.

Finally, before you can be held liable, the injured person must be immature and unable to understand the danger. Usually the courts protect only children under 12 years of age although there's no age limit set.

If the so-called attractive nuisance is necessary to your business, there's less likelihood of liability because of injury to a child trespasser. But if a well that's being used every day attract children and is dangerous to them, it's your duty to keep it covered. It's more certain that liability will result from an injury caused by unused pieces of equipment or an abandoned well.

## Animals

If you keep *dangerous* animals, you're liable for any injuries they may cause. Most farm animals aren't considered dangerous. And ordinarily there's no liability for an injury caused by domestic animals. If a person gets too near one of your cows and is kicked, he can't recover damages—unless you know that the cow might kick, or that she has a mean streak. Then it's your duty to warn the person.

It's not a nuisance to keep a vicious dog to guard your premises, but the dog must be used cautiously and kept confined. If you allow a vicious dog to run about freely, then even a trespasser who's been bitten can recover damages.

## Who Is Liable?

Up to this point we've discussed very broadly *when* there's liability for an accident on your farm. Now let's see *who* is going to be liable for the accident.

A tenant ordinarily takes the farm in the condition it is at the time it's leased. The lease may

provide otherwise, but if there's no agreement by the landlord to repair or to keep the premises in safe and suitable condition, he's not bound to do so—with one exception.

If a defect is hidden or concealed, such as a weak wall in a building, and is known to the landlord, he's under duty to repair. Otherwise, if it's not provided in the lease that the landlord is to keep the premises in good repair, he's not liable for any injuries resulting from defects. The tenant alone is liable. The law says that the person in possession and control of the farm is liable for injuries.

But the landlord is always liable for injuries due to concealed defects which he knows about and which the tenant does not know about. This liability will fall upon the landlord even if the lease provides the tenant shall make repairs.

If the landlord retains a substantial amount of control over the farm, even though the lease says nothing about the landlord's duty to repair, he's bound to keep the farm safe for the tenant and others. Thus if the owner maintains a great amount of control over the farm, he'll bear the burden of liability for accidents.

## Who's in Control?

That's one of the main tests for the landlord's liability: Has he retained control over the premises, or is the control as well as the possession completely with the tenant?

The courts have never said exactly what constitutes control by the landlord. But they have said that if a landlord has agreed merely to make repairs, he will not be considered as having control. So even if an owner agrees in the lease that he'll keep the farm in repair, he's not necessarily in control nor liable for injuries.

In one Iowa case the lease provided the landlord would make repairs. The tenant notified him of a defect, and the landlord did nothing. A guest was injured. The court said even under these circumstances the landlord was not liable because he wasn't in control of the farm.

Another instance where the owner may be liable for injuries is this:

If the defect is of a permanent nature, such as a weak wall or dilapidated building, and this defect was in existence at the time of making the lease and known to the landlord. Here both the landlord and tenant may be liable—the tenant because he's in possession, and the landlord because this known defect existed when they entered into their lease. The owner is liable with the tenant even if the tenant is negligent—even though the landlord retained no control over the premises and even if the lease provided specifically that the tenant should make repairs.

Suppose the tenant himself is injured. Can he recover damages from the owner? Under some conditions he may—if the landlord agrees to make repairs and then makes them carelessly, the landlord would be held liable if the tenant or one of his family were injured.

## Remember ...

If there's an accident on your farm and the law says there's liability for damages, the liability falls on the one in possession and control. Generally this is the *tenant*, so the burden is on him to keep the farm in safe condition. Here are the exceptions where the landlord will be held to pay for the injury. The landlord is liable for:

- Injuries due to known concealed defects of which the tenant isn't aware.

- Injuries due to a defect that is a known permanent condition which existed when the lease was made.

- Injuries on a farm where the landlord has retained a substantial control.

- Injuries as the result of the landlord making repairs carelessly.

If there's liability for an injury caused by an animal, the owner usually pays. However, if the landlord owns the animal but the tenant keeps it, the tenant would be liable. It's his duty to protect others from it.

It's not always possible to avoid all accidents, but the surest way to cut down the chances for accidents and liability is to keep your farm in a safe condition.